TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1211.

ROMEO LEWIS, HUGH SAUNDERS, RICHARD C. SAUNDERS, JUNIOR, ET AL., PLAINTIFFS IN ERROR,

vs.

ABRAHAM BARNHART AND JOSEPHUS A. GISH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JUNE 15, 1891.

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1 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

Pleas in the circuit court of the United States for the northern district of Illinois, in the southern division thereof, begun and holden at the United States court-house, in the city of Peoria, in said southern division of said district, on the third Monday in October, in the year of our Lord one thousand eight hundred and ninety, before the Honorable Henry W. Blodgett, judge of the district court of the United States for the said northern district of Illinois and *ex officio* judge of said circuit court.

Be it remembered that heretofore, to wit, on the second day of September, A. D. 1889, there was filed in the office of the clerk of said circuit court a præcipe for a summons in the words and figures following, to wit:

In the United States Circuit Court for the Northern District of Illinois, Southern Division, October Term, A. D. 1889.

2 ROMEO LEWIS, HUGH SAUNDERS, Richard C. Saunders, Jr., Susan North Dew, Ellen Maria Dew, and Lavina Harwood *vs.* ABRAHAM BARNHART and JOSEPHUS A. GISH. | Ejectment. Damages, $2,000.

You will please issue a summons in the above-entitled cause, directed to the marshal to execute.

PUTERBAUGH & PUTERBAUGH,
THOMAS MILLIKIN AND
PALMER W. SMITH,
Attorneys for Plaintiffs.

To the clerk of said court.

Be it further remembered that on the said second day of September, A. D. 1889, there was filed in the office of the clerk of said circuit court a declaration in the words and figures following, to wit:

United States Circuit Court for the Northern District of Illinois, Southern Division, October Term, A. D. 1889.

UNITED STATES OF AMERICA, *Northern District of Illinois, Southern Division,* } ss:

3 Romeo Lewis, who is a citizen of the State of Indiana, and Hugh Saunders, Richard C. Saunders, Jr., Susan North Dew, Ellen Maria Dew, and Lavina Harwood, who are citizens of the State of Texas, plaintiffs, by Puterbaugh & Puterbaugh, Thomas Millikin, and Palmer W. Smith, their attorneys, complain of Abraham Barnhart and Josephus A. Gish, who are citizens of the

State of Illinois, defendants, of a plea of ejectment; for that the plaintiffs, on the first day of August, in the year A. D. 1888, were possessed of several certain parcels of lands, with the appurtenances, lying and being in the county of Woodford, in the said southern division of the northern district of Illinois, to wit:

The west half of the northeast quarter and the east half of the northwest quarter and the east half of the southwest quarter and the west half of the southeast quarter, all in section ten (10), township twenty-six (26) north, range one (1) east, of the third (3d) principal meridian, containing in all three hundred and twenty (320) acres, more or less, of great value, to wit, twenty thousand dollars; which said lands and tenements the plaintiffs claim in fee; and, the plaintiffs being so possessed thereof, the defendants afterwards, to wit, on the 2d day of August, A. D. 1888, entered into the said tenements and now unlawfully withhold from the plaintiffs the possession thereof, to the damage of the plaintiffs of two thousand dollars, and therefore they bring their suit.

By PUTERBAUGH & PUTERBAUGH,
THOMAS MILLIKIN AND
PALMER W. SMITH,
Their Attorneys.

And be it further remembered that on the said second day of September, A. D. 1889, there was filed in the office of the clerk of said circuit court a security for costs in the words and figures following, to wit:

4 Circuit Court of the United States, Northern District of Illinois, Southern Division.

ROMEO LEWIS *et al.*
vs.
ABRAHAM BARNHART *et al.* } Ejectment.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite parties in this action or to any of the officers of this court, and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them I hereby agree and stipulate that execution may issue against my property for any costs taxed against plaintiffs.

Dated this 2nd day of September, A. D. 1889.

LEE S. HARRISON.

And be it further remembered that on the said 2nd day of September, A. D. 1889, there issued from the office of the clerk of said court, under the seal thereof, a summons in the words and figures following, to wit:

THE UNITED STATES OF AMERICA:

To the marshal of the northern district of Illinois, Greeting:

We command you to summon Abraham Barnhart and Josephus A. Gish, if they shall be found in the southern division of your dis-

trict, personally to be and appear before our judges of our circuit court of the United States for the northern district of Illinois on the first day of the next term thereof, to be holden at Peoria, in
5 the division and district aforesaid, on the third Monday of October next, to answer unto Romeo Lewis, Hugh Saunders, Richard C. Saunders, Jr., Susan North Dew, Ellen Maria Dew, and Lavina Harwood in an action of ejectment, to the damage of the said plaintiffs, as they say, of two thousand dollars, to recover the possession of certain premises, viz., certain tracts of land, with the appurtenances, situated in the county of Woodford, in the division and district aforesaid, and known, designated, and described as follows: The west half of the northeast quarter and the east half of the northwest quarter and the east half of the southwest quarter and the west half of the southeast quarter, all in section ten (10), township twenty-six (26) north, range one (1) east, of the third (3rd) principal meridian, containing in all three hundred and twenty (320) acres, more or less; in which premises the said plaintiffs claim an estate in fee; and have you then and there this writ, with a return of your doings thereon.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of our said circuit court, at Peoria aforesaid, this 2d day of September, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the 114th year.

[L. S.] WILLIAM H. BRADLEY, *Clerk*,
By ENOCH P. SLOAN, *Ch. Dep. Clerk.*

Which summons was afterwards, to wit, on the 27th day of September, A. D. 1889, returned to the office of the clerk of said circuit court and duly filed, indorsed in the words and figures following, to wit:

I personally served this writ by reading — to the within-named Abraham Barnhart and Josephus A. Gish this 10th day of
6 September, 1889.

F. H. MARSH,
U. S Marshal,
By C. L. BERRY, *Deputy.*

Marshal's fees, $7.18, paid by Puterbaugh & Puterbaugh.

And be it further remembered that afterwards, to wit, on the 26th day of September, A. D. 1889, came the defendants, by their attorneys, and filed in the office of the clerk of said circuit court a plea in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, at Peoria.

United States Circuit Court, to the October Term, A. D. 1889.

ROMEO LEWIS, HUGH SAUNDERS, RICHARD C. SAUNDERS, JR., SUSAN NORTH DEW, ELLEN MARIA DEW, and LAVINA HARWOOD
vs.
JOSEPHUS A. GISH and ABRAHAM BARNHART.

And now come the defendants, by their attorneys, and defend the wrong and injury, when, etc., and say that they are not guilty of unlawfully withholding the tenements in the said declaration mentioned, or any part thereof, in manner and form as the plaintiffs have above thereof complained against them; and of this the defendants put themselves upon the country, etc.

By WILLIAMS & CAPEN &
WALTER S. GIBSON,
Their Attorneys.

7 And afterwards, to wit, at the April term of said court, on the 22nd day of April, A. D. 1890, before the Honorable Henry W. Blodgett, judge, as aforesaid, of said court, the following further proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the Northern District of Illinois, Southern Division, April Term, A. D. 1890.

ROMEO LEWIS *et al.*
vs.
ABRAHAM BARNHART and JOSEPHUS A. GISH. } In Ejectment.

And now come the plaintiffs, by Puterbaugh & Puterbaugh, their attorneys, and suggest to the court that since the commencement of this suit, to wit, on the 20th day of February, A. D. 1890, Susan North Dew, one of the plaintiffs herein, departed this life intestate, leaving as her children and heirs-at-law Hugh Dew, George Dew, T. R. Dew, Reuben Dew, Henry Dew, May Dew, and Jessie Dew, who are all minors, and also left her surviving her husband, Thomas T. Dew, and that on the 14th day of April, A. D. 1890, the said Thomas T. Dew was by the county court of the county of Lavaca, in the State of Texas, where the said minor heirs reside, duly appointed guardian of said minor heirs, and duly qualified as such.

The plaintiffs therefore move the court that the said heirs of the said Susan North Dew, the said minors by their said guardian, may be admitted to prosecute this suit jointly with the surviving
8 plaintiffs in the same manner as if they had originally joined with them in commencing the action.

On consideration the foregoing motion is allowed, and by agreement of the parties to this suit this cause is set down for hearing next Monday morning.

And afterwards, to wit, during the last-named term of said court, on the 28th day of April, A. D. 1890, a stipulation was filed in said cause in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Illinois, April Term, A. D. 1890.

ROMEO LEWIS *et al.*
vs.
ABRAHAM BARNHART and JOSEPHUS A. GISH. } Ejectment.

Same *vs.* Oliver M. Dye & Tillie Dye. Same *vs.* William F. Mohr. Same *vs.* James Dye. Same *vs.* Andrew Johnson & Henry Funk. Same *vs.* Celicia Boner & Charles Boner. Same *vs.* Onno Dirks & Charles Boner. Same *vs.* John Klug. Same *vs.* Celicia Boner. Same *vs.* Joseph Phillips & Lena Phillips. Same *vs.* Charles McHugh. Same *vs.* Martha E. Pleasants & James Pleasants. Same *vs.* Jacob Michael.

It is stipulated and agreed by and between each of the parties to the above-entitled thirteen causes, now pending for trial in said circuit court, that a jury be, and the same is hereby, waived in the trial of each of said causes, and that said causes may be tried by the court.

THOMAS MILLIKIN,
PUTERBAUGH & PUTERBAUGH AND
PALMER W. SMITH,
Attorneys for Plaintiffs.

WILLIAMS & CAPEN,
W. S. GIBSON AND
W. G. RANDALL,
Attorneys for Defendants.

9 And afterwards, to wit, during the said last-named term, on the said 28th day of April, A. D. 1890, before the said the Honorable Henry W. Blodgett, judge, presiding, the following proceedings were had in said cause, to wit:

ROMEO LEWIS *et al.*
vs.
ABRAHAM BARNHART *et al.* } Ejectment.

This day came the parties to this suit, by their respective attorneys, and by agreement in writing and filed they waive trial by jury and submit this cause to be tried by the court without a jury. The said parties also agree to a statement of facts, also filed herein, and the trial commenced by oral argument on both sides. T. R. Dew, as guardian and next friend of the heirs of Susan North Dew, deceased, entered the appearance of said heirs. The court takes the case under advisement, to be further heard upon the brief of plaintiffs, to be prepared by July 1 next; the brief of defendants to be prepared by September 1 next, and the reply of plaintiffs to be prepared by October 1 next.

And afterwards, to wit, at the October term of said court, on the 1st day of October, A. D. 1890, before the Honorable Henry W. Blodgett, judge, as aforesaid, of said court, the following further proceedings were had in said cause, to wit:

ROMEO LEWIS *et al.*
vs.
ABRAHAM BARNHART, JOSEPHUS A. GISH. } Ejectment.

And now come again the parties, by their respective at-
10 torneys, and the court, having considered and being fully advised upon the issue heretofore submitted herein, finds the defendants not guilty. It is therefore considered by the court that the defendants go hence without day, and that they have and recover of the plaintiffs their costs by them about their defence in this behalf expended and to be taxed, and that they have execution therefor. The court heard evidence of the value of the lands involved in this suit and finds the same to be nineteen thousand dollars.

And afterwards, during the said last-named term, to wit, on the 23rd day of October, A. D. 1890, came the plaintiffs, by their attorneys, and filed their motion to set aside the findings of the court and for a new trial in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Illinois, Southern Division, October Term, A. D. 1890.

ROMEO LEWIS *et al.*
vs.
ABRAHAM BARNHART and JOSEPHUS A. GISH. } Ejectment.

And now come the plaintiffs, by their attorneys, and move the court to set aside the findings of the court in said cause and for a new trial on the ground that the court erred in the application of the law to the facts of said cause.

THOMAS MILLIKIN, PALMER W. SMITH,
PUTERBAUGH & PUTERBAUGH,
Attorneys for Plaintiffs.

11 And on the said 23rd day of October, A. D. 1890, the following further proceedings were had in said cause, to wit:

ROMEO LEWIS *et al.*
vs.
ABRAHAM BARNHART *et al.* } Ejectment.

This cause came on to be heard on the motion of the plaintiffs for a new trial herein, and the court, being fully advised in the premises, do overrule said motion. Plaintiffs ask and obtain leave to file bill of exceptions herein in sixty days.

And be it further remembered that afterwards, to wit, on the 27th day of October, A. D. 1890, during the said last-named term, there was filed in said cause a bill of exceptions in the words and figures following, to wit:

12 In the United States Circuit Court for the Northern District of Illinois, Southern Division, October Term, A. D. 1890.

ROMEO LEWIS *et al.*
vs.
ABRAHAM BARNHART and JOSEPHUS A. GISH. } Ejectment.

Bill of Exceptions.

Be it remembered that on the trial of the above-entitled cause, at the April term, A. D. 1890, of this court, a jury having been waived and a trial having been had before the court by agreement of all the parties, the said parties introduced in evidence an agreed statement of facts, signed by the respective parties, which, so far as applies to this particular case, is as follows, to wit:

Statement of Facts.

It is agreed that the following are admitted facts, and that proof need not be offered in support of the same in the trial of the above cause and in the cases therein mentioned:

1st. That Romeo Lewis died testate at his residence, in Oxford, Butler county, Ohio, June 24th, 1843, aged 48 years.

2nd. That he died leaving no issue surviving him, but leaving a widow, Jane N. Lewis.

3rd. That said testator, Romeo Lewis, and said Jane L. Lewis were each married but once.

4th. That said testator's will was executed January 8th, 1842, and regularly and duly probated and recorded in said Butler county, Ohio, July 13th, 1843, by the court of common pleas of said Butler county, which then had jurisdiction of probate of wills.

5th. That under said will said Jane N. Lewis entered upon and discharged her duties as executrix of the estate of said testator, and finally settled the personal estate in the proper probate court of said county April 4th, 1871.

6th. That said Jane N. Lewis, on September 2nd, A. D. 1843, in said court of common pleas, duly elected as such widow to take under such will, which election was duly entered of record and remains in force.

13 7th. That said Jane N. Lewis was born July 10th, 1808, and died as said testator's widow, without issue her surviving, at Oxford, Ohio, where she always resided, July 11, 1888.

8th. That three children were born alive to said Jane N. Lewis and the testator during their marriage, who died prior to the date of said will.

9th. That a fourth child was born alive to said Jane N. Lewis and said testator after the date of said will, to wit, on April 15th, 1843, who died April 20th, 1843, and prior to the death of said testator.

10th. That Sarah Lewis, mother of testator, pre-deceased said testator, dying April 11th, 1843.

11th. That the personal estate and proceeds of the sale of all the lands in Arkansas, Mississippi, and Florida of said testator were ex-

hausted in paying debts, funeral expenses, costs of administration, and legacies under said will.

12th. That said testator had in his lifetime four brothers, one of whom died before the testator, leaving as his sole heir his daughter, Frances Lewis, named in said will, which said Frances also died unmarried and without issue before said testator and after the date of his said will.

13th. That the names of the other three brothers were Theodore, Willis, and Harry Lewis.

14th. That said testator had no sisters and no brother but the four above mentioned.

15th. That said Theodore Lewis died before the testator, leaving an only son and heir, Alexander Lewis, who also died before said testator, leaving as his only issue and heir Romeo Lewis, Jr., one of the plaintiffs herein, who has always resided in Indiana.

16th. That said Willis Lewis also died before the testator, leaving as his only child and heir said Ellen Maria Lewis Saunders, named in said will, who died intestate January 12th, 1865, leaving as her only children and heirs-at-law the plaintiffs, Hugh Saunders, Richard Saunders, Jr., Susan North Dew, Ellen Maria Dew, and Lavina Harwood, who have always resided in the States of Mississippi and Texas and nowhere else.

17th. That said Harry Lewis survived his brother, the testator, dying at said Oxford June 16th, 1860, intestate, leaving a widow, Mary Lewis, and an only son as his sole surviving heir, named George M. Lewis.

18th. That said George M. Lewis died intestate, leaving no widow or child or issue, and leaving his mother him surviving, the said Mary Lewis.

19th. That the said Mary Lewis, widow of said Harry Lewis and mother of said George M. Lewis, died testate in 1883, unmarried.

20th. That said Jane N. Lewis was the residuary devisee of said Mary Lewis, and as such succeeded to all the title of said Mary Lewis in and to the lands in controversy, and that all such title as Mary Lewis had, if any, has passed to defendants by stipulation herein.

21st. That said Ellen Maria Lewis Saunders, named in said will, was a married woman, with a husband living, and without children at the date of said will, and that said Frances Lewis, Susan H. North, and Lucy D. North were unmarried women living at the date of said will.

22nd. That said testator, Romeo Lewis, was seized in fee simple of the lands in controversy by patent from the United States at the date of said will and at the date of his decease, and that
14 Romeo Lewis during the year 1838 duly entered said lands at the U. S. land office at Springfield, Ill., but that none of the defendants or their grantors or lessors or any one under whom they claim, except Jane N. Lewis, had any notice that he was so seized until September 1st, 1889, except as appears from the Book of Land Entries in the office of the county clerk of Woodford county, Illinois, furnished by the auditor to the county clerk for the pur-

poses of taxation, and except also such notice as may have been conveyed by deed of Jane N. Lewis to John G. Mohr, mentioned in paragraph No. 25 of these stipulations, unless the court shall find as a matter of law the said land entries in the land office at Springfield, Illinois, and records in the land office at Washington were constructive notice to defendants or those under whom they claim at the date of said deeds and bonds for deeds herein mentioned, and unless the court shall find such constructive notice from the fact, which is admitted to be true, that all said lands were assessed for taxation in 1845 in the name of Romeo Lewis, and sold for non-payment of said taxes in 1846.

23rd. That the deed from Jane N. Lewis to Absolum Dehority for the E. ½ of the N. W. ¼ and the W. ½ of the N. E. ¼ and the E. ½ of the S. W. ¼ and the W. ½ of S. E. ¼, all in section 10, T. 26 N, R. 1 E., of the 3rd P. M., in Woodford Co., Illinois, under which the defendants claim title, is dated August 31st, 1866.

24th. That the defendants have a complete chain of title, properly recorded at the date of said deeds or bonds for deeds, to the lands described in the declaration in this case, under deeds with full covenants of warranty, from Jane N. Lewis to themselves, which deeds were also properly recorded at the dates of the execution thereof, and that said lands have been actually occupied and resided upon by the defendants and their grantors from the date of the purchase thereof, as shown by said deeds from Jane N. Lewis, and that they have severally paid all taxes assessed on said lands from the date of said deeds to the present time.

25th. That none of the defendants or any of the persons through whom they claim title, except said Jane N. Lewis, had any knowledge whatever of the existence or probate of said will of testator prior to the time what purports to be a copy of said will was recorded in Book U of Records of Deeds in the recorder's office of said Woodford county, August 15th, 1866, and the effect of such record as notice is to be determined by the court, subject to the following exception; that in the deed by Jane N. Lewis to John G. Mohr, dated February 8th, 1853, recorded in Book F, page 423, of the Record of Deeds, in the office of said recorder of said county—which is a warranty deed with full covenants—at the end of the description of the lands conveyed occur the following words: "Said tract of land having been held by Romeo Lewis, the deceased husband of said grantor, and to her devised in the last will and testament of said Romeo Lewis," the effect of which is to be submitted to the court under such competent testimony as defendants may offer, unless the court shall determine as a matter of law that the said record and probate of said will and election of the widow in Butler county, Ohio, in 1843 is constructive notice

26th. That Guernsey Y. Roots was the husband of said Jane N. Lewis' sister prior to and after the death of said testator, and died at Cincinnati, Ohio, which was his home for a number of years, in September, 1888.

27th. That said Guernsey Y. Roots, October 13th, 1846, purchased said lands at tax sale for the taxes of 1845, and that the said Guern-

sey Y. Roots knew of the existence and probate of said will and the appointment of said Jane N. Lewis as executrix thereof, and of her election to take under said will, but none of the defendants or the parties through whom they claim, except the said Jane N. Lewis, knew of the relationship of said Guernsey Y. Root to said Jane N. Lewis, or had any knowledge of the person of said Guernsey Y. Roots except that disclosed by the records.

28th. That all said lands were at the date of said will and the death of the testator, and until conveyed by said Jane N. Lewis, as hereinbefore set forth, wild and uncultivated, of little value, and in a new and sparsely settled country.

29th. That said will of Romeo Lewis was written by the testator himself; that he was not a lawyer by profession, but a civil engineer and a man of culture and intelligence.

That on the 20th day of February, A. D. 1890, after the commencement of this suit, Susan North Dew, one of the plaintiffs, at the county of Lavaca, in the State of Texas, where she then resided, departed this life intestate, leaving T. T. Dew, her husband, and Hugh Dew, T. R. Dew, Reuben Dew, Henry Dew, George Dew, Mary Dew, and Jessie Dew, her only children and heirs-at-law; that all said children are minors; that on the 14th day of April, A. D. 1890, the said T. R. Dew was, by the county court of said county of Lavaca, in the State of Texas, having jurisdiction of the subject-matter, duly appointed guardian of the estate and person of said minors and duly qualified as such, and received from said court letters of gua-dianship.

Additional Stipulation Admitted in Evidence on the Trial of This Cause to Save Taking Evidence.

1st. That on the 7th day of May, 1856, Jane N. Lewis made an instrument in writing, purporting to be a power of attorney, to Harry Lewis, the brother of her husband, Romeo Lewis, deceased, authorizing said Harry Lewis to sell and contract to sell the lands involved in this suit. A certified copy from the recor-s of Woodford county, Illinois, of said power of attorney is to be admitted in evidence; and,

16 2nd. On the 21st of June, 1856, said Harry Lewis, claiming to act under said power of attorney, contracted to sell the lands involved in this suit to Absolum Dehority, the original of which contract is to be admitted in evidence, the effect of which is to be determined by the court.

3rd. And that in the year 1856 said Dehority went into the possession of and commenced improving said lands, claiming the same under said contract, and that within the next two years the said Dehority had fenced all of said lands and built two houses on it and put a large part of it in cultivation, and that the said Dehority continued to reside upon and claim to be the owner of said lands until his death, on or about September 15th, 1876.

4th. That on the 31st day of August, 1856, Jane N. Lewis made to said Dehority a warranty deed to said lands in order to carry out the contract of sale made by said Harry Lewis.

5th. That said Absolum Dehority died intestate, leaving a widow and one son as his sole heir, who remained in possession of the lands until the 4th day of February, 1881, when the said widow and son of Absolum Dehority conveyed the lands to one Lawrence Gasner, who took possession under said last deed from the widow and son and held possession under it until the 1st day of November, 1881, when said Gasner conveyed the lands by warranty deed to Josephus A. Gish, who at once took possession under said deed and continued in possession by his tenants from that time to this.

6th. That the defendant Abraham Barnhart is and always has been since he was in possession of said lands the tenant of said Josephus A. Gish.

7th. That said Dehority paid the taxes on said lands in the year 1858 for the year 1857, and the said Absolum Dehority and those claiming under him as above have paid all the taxes assessed on said lands up to the commencement of this suit.

17 The plaintiffs' counsel further introduced in evidence an exemplified copy of the will of Romeo Lewis, deceased, dated January 8th, 1842, probated in Butler county, Ohio, July 13th, 1843, for the purpose of showing that the estate of Jane N. Lewis was a life estate only, and also that it was her duty as such life tenant and as executor of the estate of said Romeo Lewis to have paid the taxes on the land in controversy, to wit:

In the name of God amen the eight day of January in the year of our Lord one thousand eight hundred and forty two I Romeo Lewis of the county of Butler State of Ohio, being through the divine blessings of God in a sound state of mind and memory but calling to mind the frail tenure of this life and that it is appointed unto all men once to die do make and ordain this my last will and testament that is to say it is my will and desire that all my interest in and to any lands in the Territory of Florida, in the States of Arkansas and Mississippi be sold upon a proper credit, that all debts due me in Florida upon bond and mortgage or otherwise, or at any other place, be collected, and that all my just debts be paid from the proceeds thereof. And I give and bequeath to my aged and venerable mother Sarah Lewis the sum of two hundred dollars, and it is my wish and desire that she occupy as her own during the residue of her life, the room in my mansion house in Oxford which was intended for her use, and that such further aid be extended to her as may be necessary for her comfort and support.

I further give and bequeath to my niece Ellen Maria Lewis Saunders now of Mississippi and to the heirs of her body the sum of one thousand dollars. I give and bequeath to Susan H. North the further sum of one thousand dollars. I give and bequeath to Lucy D. North the further sum of one thousand dollars. I further give and bequeath to my niece Frances S. Lewis the sum of five hundred dollars. I further give and devise to my dearly beloved wife, Jane N. Lewis, and to the heirs of her body, my houses and lots in the town of Oxford, Butler county, Ohio, and all the residue of my lands in the States of Indiana and Illinois, and all the rest, residue

and remainder of my personal estate, goods and chattels of every kind and description whatsoever to be equally divided between them to share and share alike. And lastly I hereby appoint my said beloved wife Jane N. Lewis sole executrix of this my last will and testament, hereby revoking all my former wills by me made. And I do hereby ratify and confirm this and no other to be my last will and testament.

In witness whereof I have hereunto set my hand and seal the day and year first above written.

ROMEO LEWIS. [L S SEAL.]

Signed, sealed, published, pronounced and declared by the said Romeo Lewis as his last will and testament in the presence of us the subscribers.

G. Y. ROOTS.
A. L. N. ROOTS.
WM. GRAHAM.

THE STATE OF OHIO, } ss:
Butler County, }

Court of Common Pleas, June Term, 1843.

Personally appeared in open court G. Y. Roots and A. L. N. Roots, of lawful age, who, being duly sworn, depose and say and each
18 for himself and herself deposeth and saith that in his and her presence the said Romeo Lewis, the testator, now deceased, acknowledged the foregoing signature and seal to be his true and proper signature and seal; that at the request and in the presence of the said testator they signed the same as witnesses thereto, and that at the time of the signing and acknowledging thereof the said testator was of sound mind and memory, of full age, and under no restraint.

G. Y. ROOTS.
A. L. N. ROOTS.

Sworn to and subscribed in open court 13 July, 1843.
TAYLOR WEBSTER, *Clerk.*

At the same time likewise appeared in open court William Graham, of lawful age, who, being duly sworn, & deposeth & saith that in his presence the said Romeo Lewis, the testator, acknowledged the foregoing writing as and for his will and testament, and that at the request of the said testator and in his presence he signed his name thereto as a witness, and that at the time of the witnessing and acknowledging thereof the said testator was of sound mind and memory, of full age, and under no restraint.

WM. GRAHAM.

Sworn to and subscribed in open court 13 July, 1843.
TAYLOR WEBSTER, *Clerk.*

SECOND MONDAY, 12*th June*, 1843.

THE STATE OF OHIO, } ss:
Butler County, }

Court of Common Pleas, June Term, 1843.

Before the Honorable Elijah Vance, Esquire, president; Vincent D. Enyart, N. Wade, & James O'Connor, Esquires, associate judges.

ROMEO LEWIS, Deceased.

Be it remembered that the last will and testament of Romeo Lewis, late of the county aforesaid, deceased, being presented for probate by Jane N. Lewis, the executrix therein named, and the same being proved by the oath of G. Y. Roots, A. L. H. Roots, and William Graham, the subscribing witnesses thereto, it is ordered that the same be recorded, &c.

And hereupon the said Jane N. Lewis prays administration of the estate of the said Romeo Lewis, deceased, according to the tenor of the said last will and testament, and to her it is granted, &c., the said executrix, with William Graham, G. Y. Roots, and John H. Shuey, having given bond unto the State of Ohio in the sum of four thousand dollars.

Ordered that H. B. Mayo, P. H. Roots, and R. E. Hills be the appraisers, &c.

FOURTH MONDAY, 25*th September*, 1843.

THE STATE OF OHIO, } ss:
Butler County, }

Court of Common Pleas, September Term, 1843.

Before the Honorable Elijah Vance, Esquire, president, & Vincent D. Enyart, N. Wade, & James O'Connor, Esquires, associate judges.

ROMEO LEWIS, Deceased.

Jane N. Lewis, widow, relict of Romeo Lewis, deceased, now personally appears in open court and elects to take under the last will and testament of her said husband.

Authentication under act of Congress.

19 STATE OF OHIO, }
County of Butler, }

I, P. G. Berry, sole judge and *ex officio* clerk of the probate court in and for the said county of Butler, do hereby certify that I have compared the foregoing copy of the records of the last will and testament and the affidavits of the subscribing witnesses thereto of Romeo Lewis, late of the county of Butler aforesaid, deceased, and the order of court admitting the same to record and granting administration thereon to Jane N. Lewis and the election of said Jane N. Lewis to take under said will, with the original records thereof now remaining in this office and in my custody, and have found

the same to be transcripts therefrom and of the whole of such original records; and I further certify that said exemplification would be received in evidence in all the courts of the said State of Ohio.

In testimony whereof I have hereunto set my hand and affixed the seal of the said probate court, at Hamilton, this 11th day of February, A. D. 1890.

[SEAL.] P. G. BERRY,

Sole Judge and ex Officio Clerk of the Probate Court.

STATE OF OHIO, }
County of Butler, } ss:

I, P. G. Berry, sole judge of the probate court of said county, do hereby certify that P. G. Berry, whose genuine signature is affixed to the foregoing certificate, is, under the laws of Ohio, by virtue of his office as sole judge of said court also the clerk of said court, and was such clerk at the time of making and subscribing the same; that his attestation aforesaid is in due form of law and by the proper officer, and that the seal thereto affixed is the seal of the said probate court; and I further certify that said last will and testament has been admitted to probate in said county and duly recorded.

Witness my hand and seal this 11th day of February, A. D. 1890.

[SEAL.] P. G. BERRY,

Sole Judge of the Probate Court of Butler Co., Ohio.

The plaintiffs' counsel further introduced in evidence a certified copy of the records of the county of Woodford, Illinois, showing that the land in controversy was entered by Romeo Lewis in 1838 and was subject to taxation in 1844; which is the same document described in the paragraph beginning with the word "except," in the 5th line, and ending with the word "taxation," in the 7th line, of the 3rd page of this bill of exceptions. The defendants' counsel objected to this evidence as incompetent, but the same was admitted subject to such objections.

The plaintiffs' counsel also introduced in evidence a certified copy of the will of Romeo Lewis, deceased, from the records of the recorder's office of Woodford county, Illinois, in the words and figures to wit:

In the name of God amen the eight day of January in the year of our Lord one thousand eight hundred and forty two I Romeo Lewis of the county of Butler State of Ohio, being through the divine blessings of God in a sound state of mind and memory but calling to mind the frail tenure of this life and that it is appointed unto all men once to die do make and ordain this my last will and testament that is to say it is my will and desire that all my interest in and to any lands in the Territory of Florida, in the States of Arkansas and Mississippi be sold upon a proper credit, that all debts due me in Florida upon bond and mortgage or otherwise, or at any other place, be collected, and that all my just debts be paid from the proceeds thereof. And I give and bequeath to my aged and venerable mother Sarah Lewis the sum of two hundred dollars, and it is my wish and desire that she occupy as her

own during the residue of her life, the room in my mansion house in Oxford which was intended for her use, and that such further aid be extended to her as may be necessary for her comfort and support.

I further give and bequeath to my niece Ellen Maria Lewis Saunders now of Mississippi and to the heirs of her body the sum of one thousand dollars. I give and bequeath to Susan H. North the further sum of one thousand dollars. I give and bequeath to Lucy D. North the further sum of one thousand dollars. I further give and bequeath to my niece Frances S. Lewis the sum of five hundred dollars. I further give and devise to my dearly beloved wife, Jane N. Lewis, and to the heirs of her body, my houses and lots in the town of Oxford, Butler county, Ohio, and all the residue of my lands in the States of Indiana and Illinois, and all the *rent*, residue and remainder of my personal estate, goods and chattels of every kind and description whatsoever to be equally divided between them to share and share alike. And lastly I hereby appoint my said beloved wife Jane N. Lewis sole executrix of this my last will and testament, hereby revoking all my former wills by me made. And I do hereby ratify and confirm this and no other to be my last will and testament.

In witness whereof I have hereunto set my hand and seal the day and year first above written.

ROMEO LEWIS. [SEAL.]

Signed, sealed, published, pronounced, and declared by the said Romeo Lewis as his last will and testament in the presence of us, the subscribers.

G. Y. ROOTS.
A. L. N. ROOTS.
WM. GRAHAM.

THE STATE OF OHIO, } ss:
Butler County, }

Court of Common Pleas, June Term, 1843.

Personally appeared in open court G. Y. Roots and A. L. *B.* Roots, of lawful age, who, being duly sworn, depose and say, and each for himself and herself deposeth and saith, that in his and her presence the said Romeo Lewis, the testator, now deceased, acknowledged the foregoing signature and seal to be his true and proper signature and seal; that at the request and in the presence of the said testator they signed the same as witnesses thereto, and that at the time of the signing and acknowledging thereof the said testator was of sound mind and memory, of full age, and under no restraint.

G. Y. ROOTS.
A. L. N. ROOTS.

Sworn to and subscribed in open court 13 July, 1843.

TAYLOR WEBSTER, *Clerk*.

At the same time likewise appeared in open court William Graham, of lawful age, who, being duly sworn, & deposeth & saith that in his

presence the said Romeo Lewis, the testator, acknowledged the foregoing writing as and for his will and testament, and that at the request of the said testator and in his presence he signed his name thereto as a witness, and that at the time of the witnessing
21 and acknowledging thereof the said testator was of sound mind and memory, of full age, and under no restraint.

WM. GRAHAM.

Sworn to and subscribed in open court 13 July, 1843.

TAYLOR WEBSTER, *Clerk.*

THE STATE OF OHIO, *Butler County,* } ss:

Probate Court.

I, Z. W. Selby, sole judge and *ex officio* clerk of the probate court within and for the county aforesaid, do hereby certify the foregoing to be a true and correct copy of the last will and testament of Romeo Lewis, late of said county, deceased, and of the affidavit of the subscribing witness thereto, and of the order and proceedings of said court admitting the same to probate, the said copies of said will, affidavit, order, and proceedings, having been taken from the originals on file and of record in said court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the probate court, at Hamilton, the 2d day of August, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.]

Z. W. SELBY,
Probate Judge and ex Officio Clerk.

{ Revenue stamp 5c., cancelled. }

Filed for record Aug. 15, 1866."

STATE OF ILLINOIS, *Woodford County,* } ss:

I, J. C. Irving, clerk of the circuit court and *ex officio* recorder within and for the county of Woodford, in the State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the record of the "copy" of the "will" of Romeo Lewis, as the same appears of record in my office in Deed Record "U," on pages 621, 622, and 623 of said record. I further certify that I am the keeper of the said record and of the seal of said circuit court.

In testimony whereof I have hereunto subscribed my name and affixed my official seal, at Metamora, in said county, this 25th day of April, A. D. 1890.

J. C. IRVING,

[SEAL.] *Circuit Clerk and ex Officio Recorder of Woodford Co. Ill.*

Defendants' counsel objected to the introduction of said paper, because, first, it was not a record, because it did not show any order of court of Butler Co., Ohio, admitting said will to probate;

2nd, because the same was not properly certified; but the same was admitted, subject to objections.

The plaintiffs' counsel also introduced in evidence a certified copy of what purports to be a sheriff's deed to Jane N. Lewis, dated May 16th, 1846, not for the purpose of showing title nor for the purpose of laying a foundation for a claim of color of title, but for the limited purpose of showing that the taxes for the year mentioned were paid by Jane N. Lewis, and that the proceeding to have the land in question sold for taxes and bid in was fraudulent on behalf of said Jane N. Lewis, to defeat the remainder or reversionary interests that might exist, and that such proceeding was a substantial payment of said taxes by her. The defendants' counsel objected to the same as incompetent for the purpose offered; but the court admitted the same, subject to objection.

22 Which said certified copy of said tax deed is as follows, to wit:

David Irving, sh'ff, to Jane N. Lewis. } Deed No. 1171. Recorded May 16th, 1849.

Know all men by these presents that whereas, at the September term, 1846, of the circuit court of Woodford county, a judgment was obtained in said court in favor of the State of Illinois against the following-described tracts of land situate in said county of Woodford and State of Illinois, viz:

The west half of the northeast quarter of section three (3), the west half of the southwest quarter of section three (3), the west half of the northeast quarter of section (10), the east half of the northwest quarter of section ten (10), the west half of the southeast quarter of section ten (10), the east half of the southwest quarter of section ten (10), all in township twenty-six (26) north, of range one (1) east, of the third principal meridian; also the east half of the northeast quarter of section twenty-three (23), the east half of the southeast quarter of section twenty-five (25), the west half of the northeast quarter of section twenty-five (25), the east half of the northeast quarter of section (25), the east half of the west half of the southeast quarter of section (25), the east half of the northeast quarter of section thirty-six (36), the west half of the northeast quarter of section thirty-six (36), the west half of the southwest quarter of section thirteen (13), the east half of the southeast quarter of section fourteen (14), the west half of the northwest q-arter of section twenty-four (24), the ten last-described tracts in township twenty-seven (27) north, of range one (1) east, of the third principal meridian; also the west half of the southwest quarter of section thirty (30), the west half of the southeast quarter of section thirty (30), the east half of the northeast quarter of section thirty-one (31), the three, 3, last-described tracts in township twenty-seven (27) north, of range two (2) east, of the third principal meridian, for the sum of thirty-three dollars and seventy-three cents, being the amount of taxes, interest, and costs assessed upon said tracts of land for the year 1845; and whereas, on the thirteenth (13) day of

October, A. D. 1846, William C. Martin, sheriff of the county aforesaid, by virtue of a precepe issued out of the circuit court of the county aforesaid, dated September twentieth (20), A. D. 1846, and to the sheriff of said county directed, did expose to public sale at the door of the court-house, in the county aforesaid, in conformity with all the requisitions of the statute in *in* such case made and provided, the tracts of land above described for the satisfaction of the judgment so rendered as aforesaid; and whereas, at the time and place aforesaid, Gurnsey Y. Roots, of the State of Ohio, having offered to pay thirty-two dollars an- seventy-seven cents, part of the amount aforesaid, for the W. ½ N. E. ¼, W. ½ S. W. ¼, of sec. three (3); W. ½ N. E. ¼, E. ½ N. W. ¼, W. ½ S. E. ¼, E. ½ S. W. ¼, of sect. ten (10), all in T. 26 N., R. one (1) east; the E. ½ N. E. ¼ of sec. 23; E. ½ S. E. ¼, W. ½ N. E. ¼, W. ½, E. ½ N. E. ¼, of sect. 25; E. ½ N. E. ¼, W. ½ N. E. ¼, of sec. 36; W. ½ S. W. ¼ of sec. 13, E. ½ S. E. ¼ of sect. 14, W. ½ N. W. ¼ of sec. 24, the last nine (9) tracts in T. 27 N., R. one (1) east; and W. ½ S. W. ¼, W. ½ S. E. ¼, of sec. 30; E. ½ N. E. ¼ of sec. 31, the three last tracts in T. 27 N., R. two (2) east, part of the land above described, which was the least quantity bid for the said lands, was stricken of- to him at that price; and whereas also, at the time and place aforesaid, George W.
23 Casseday, of the county of Vermillion, offered to pay ninety-six cents, part of the first amount mentioned, for E. ½, W. ½ S. E. ¼, of sec. 25, T. 27 N., R. 1 E., one of the tracts first mentioned, which was the least quantity bid for the tract of land, was stricken off to him at that price; and whereas the said Guernsey Y. Roots did by his endorsement, under his hand, written on the back of the certificate of purchase to him executed by the clerk of the county commissioners' court of said Woodford county for the tracts of land so sold as aforesaid, at the time of said sale (said endorsement is without date), assign the said certificate of purchase to Jane N. Lewis, of the State of Ohio; and whereas the said George W. Casseday did by his endorcement, under his hand, written on the back of the certificate to him executed by the clerk of the county commissioners' court of said Woodford county for the tract of land so sold as aforesaid, at the time of said sale, said endorsement bearing date the twenty-fifth day of March, A. D. 1849, assign the said certificate of purchase to Jane N. Lewis, of the State of Ohio:

Now, therefore, I, David Irving, sheriff of Woodford county, for and in consideration of the said sum of thirty-three dollars and seventy-three cents in hand paid by the said Guernsey Y. Root & George W. Casseday at the time of the aforesaid sale, and by virtue of the statute in such cases made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Jane N. Lewis, as assignee of Guernsey Y. Root & George W. Casseday, her heirs and assigns, the above-described tracts of land, viz: The west half of the northeast quarter of section three (3), the west half of the southwest quarter of section three (3), the west half of the northeast quarter of section ten (10), the east half of the northwest quarter of section ten (10), the west half of the southeast quarter of section ten (10), the east half of the south-

west quarter of section ten (10), all in township twenty-six (26) north of range one (1) east; the east half of the northeast quarter of section twenty-three (23), the east half of the southeast quarter of section twenty-five (25), the west half of the northeast quarter of section twenty-five (25), the east half of the northeast quarter of section twenty-five (25), the east half of the west half of the southeast quarter of section twenty-five (25), the east half of the northeast quarter of section thirty-six (36), the west half of the northeast quarter of section thirty-six (36), the west half of the southwest quarter *of quarter* of section thirteen (13), the east half of the southeast quarter of section fourteen (14), the west half of the northwest quarter of section twenty-four (24), the ten (10) last-described tracts all in township twenty-seven (27) north of range one (1) east; also the west half of the southwest quarter of section thirty (30), the west half of the southeast quarter of section thirty (30), and the east half of the northeast quarter of section thirty-one (31), the three (3) last-described tracts in township twenty-seven (27) north, of range two (2) east, of the third principal meridian; to have and to hold unto the said Jane N. Lewis, her heirs and assigns forever, subject, however, to all the right of redemption provided by law.

In witness whereof I, David Irving, sheriff as aforesaid of the authority aforesaid, have hereto subscribed my name and affixed my seal this sixteenth day of May, in the year of our Lord one thousand eight hundred and forty-nine.

DAVID IRVING, [s.]
Sheriff of Woodford County, Illinois.

24 STATE OF ILLINOIS, } ss:
Woodford County, }

I certify that on the sixteenth day of May, in the year of our Lord one thousand eight hundred and forty-nine, personally appeared before me, John J. Perry, clerk of the county commissioners' court for the county aforesaid, David Irving, sheriff of said Woodford county, who is personally known to me, the said clerk, to be the identical person whose name is subscribed to the foregoing deed as having executed the same, and acknowledged that he had executed said deed for the uses and purposes therein mentioned. In testimony whereof I have hereunto subscribed my name and affixed the seal of said court the day and year above written.

[L. S.] JOHN J. PERRY, *Clerk.*

STATE OF ILLINOIS, } ss:
Woodford County, }

I, J. C. Irving, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby certify that the above and foregoing, on pages numbered from one to —, inclusive, is a true and correct copy of a tax deed from David Irving, sheriff of Woodford county, Illinois, to Jane N. Lewis, as the same appears of record in Deed Record "C," on pages 368, 369, and 370, now in my office.

I further certify that I am the keeper of the records and seal of said circuit court.

Witness my hand and the seal of said circuit court, at Metamora, Illinois, this 27th day of August, A. D. 1889.

[SEAL.] J. C. IRVING,
Circuit Clerk.

The plaintiffs' counsel then called as a witness in their behalf J. C. IRVING, who testified that he was and had been for about two years clerk of the circuit court and recorder of Woodford county, Illinois; that he had examined the records in his office with reference to the entering of a judgment against the lands in controversy for the taxes of the year 1845, and that he was unable to find any record of any such judgment in his office; that he had examined the tax books of Woodford county for the years 1844 and 1845 and finds that the lands in controversy for those years were assessed in the name of Romeo Lewis as patentee and owner.

To which defendants' counsel objected as being incompetent evidence for the purposes for which it was offered; but the court admitted it, subject to the objection.

The plaintiffs' counsel then proved by the entries in the tax books of Woodford county for the years 1844 and 1845 that the lands in controversy were assessed for taxes in the name of Romeo Lewis as patentee and owner.

To which defendants' counsel objected as being incompetent evidence for the purposes for which it was offered; but the court admitted it, subject to the objection.

The plaintiffs thereupon rested their case.

Whereupon the defendants, by their counsel, offered in evidence the same tax deed hereinbefore referred to for the purpose of showing color of title. The plaintiffs' counsel objected to the said tax deed being admitted in evidence for the purpose stated, for the reason that there is no evidence of any judgment against said lands for taxes. The said tax deed was admitted, subject to objection.

25 The defendants' counsel also introduced in evidence a certified copy of a power of attorney from Jane N. Lewis to Harry Lewis, dated May 7th, 1856, authorizing Harry Lewis to sell all the lands involved in this suit, as specified in the 1st paragraph of additional stipulation.

Also the original bond from Harry Lewis to Absolum Dehority for the sale of this land, as specified in the 2nd paragraph of said additional stipulation.

26 *Copy of Power of Attorney.*

Jane N. Lewis to Harry Lewis. } Power of Attorney. No. 979. July 24, 1856.

Know all men by these presents that I, Jane N. Lewis, of the county of Butler and State of Ohio, do hereby constitute Harry

Lewis, of the city of Cincinnati, Ohio, my attorney for me and in my name to bargain, sell, and convey in fee simple, by deed of general warranty, for such price and upon such terms of credit and to such person or persons as he shall see fit, the whole or any part of the following premises, situated in the county of Woodford and State of Illinois and described as follows:

The west half of the southwest qr. of section three, township twenty-six (26), range one east; the west half of the northeast qr. of section ten, in the town. and range aforesaid, and the east half of N. west qr. and east half of the southwest qr. and the west half of the southeast qr. of said section ten, township twenty-six, range one east; also the west half of the southwest quarter of section thirteen, township twenty-seven, range one, and the east half of the northeast qr. of section fourteen, and east half of the northeast qr. section twenty-three, and the west half of the northwest qr. of section twenty-four, and the northeast qr. of section twenty-five (25), and east half of the southeast qr. of said section twenty-five (25), and the east half of the west half of the northeast qr. of said section twenty-five (25), township twenty-seven (27), range one east, and the N. east qr. of section thirty-six, range one east; and the west half of the southwest qr. of section thirty, and the west half of the southeast qr. of section thirty, range two east, and east half of the northeast qr. of section thirty-one (31), township twenty-seven, range two east.

Hereby ratifying and confirming all such bargains, receipts for purchase-money, agreements, and deeds as shall be made, executed, or acknowledged in the premises by my said attorney, the same as if I was personally present and did the same.

In witness whereof I have hereunto set my hand and seal this 7th day of May, 1856.

JANE N. LEWIS. [SEAL.]

Signed, sealed, and acknowledged in presence of—
GEORGE LEWIS.
W. H. SMITH.

STATE OF OHIO, }
Butler County. }

Before me, W. H. Smith, a notary public within and for the county and State aforesaid, personally came Jane N. Lewis, the above-named grantor, and acknowledged the signing and sealing of the above power of attorney to be her voluntary act and deed for the uses and purposes therein named.

In testimony whereof I have hereunto set my hand and seal this 7th day of May, A. D. 1856.

[L. S.] W. H. SMITH,
Notary Public.

27 STATE OF ILLINOIS, }
County of Woodford, } ss:

I, J. C. Irving, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby certify that

the above and foregoing is a true and correct copy of a power of attorney from Jane N. Lewis to Harry Lewis as the same appear of record in my office, in Mortgage Record "C," on page 133 of said record. I further certify that I am the keeper of the said record and of the seal of said circuit court.

In testimony whereof I have hereunto subscribed my [L. S.] name and affixed my official seal, at Metamora, in said county, this 26th day of April, A. D. 1890.

J. C. IRVING,
Clerk of the Circuit Court and ex Officio Recorder for Woodford Co., Ill.

28 *Copy of Bond for Deed.*

Harry Lewis to Absolum Doherty. } Bond. No. 967. Recorded July 7, 1856.

Know all men by these presents that I, Harry Lewis, of the county of Hamilton and State of Ohio, of the first part, and Absolum Doherty, of the county of Tazewell and State of Illinois, of the second part, witnesseth that the said Harry Lewis *are* held and firmly bound unto Absolum Doherty in the penal sum of ten thousand and six hundred dollars.

Now, the condition of the above obligation are such that the said party of the first part, for and in consideration of the sum of five thousand & six hundred dollars, the receipt of which is hereby acknowledged by a promissory note bearing even date with this instrument, signed and delivered by the said party of the second part unto the said party of the first part.

Now, if the said party of the first part shall make or cause to be made a good and sufficient deed of general warrantee, clear of all incumbrance, upon full payment of said notes, according to date and tenor thereof, in the following messuage and tenements, to wit, the west half of the southwest quarter of section three; also the northeast quarter of section ten; also the northwest quarter of section ten, all in township twenty-six north, of range one east, of the third principal meridian, then this instrument to be void; otherwise to remain in full force and virtue in law.

HARRY LEWIS.

Signed and delivered this 21st day of June, A. D. 1856, in presence of—

WM. HARPER &
HENRY SALTZMAN.

The agreement is made between Mr. Harry Lewis that Absolum Dehorty is to have a deed for the west half of the northeast quarter of section three, named in this bond, on the first of January, 1857, by him, Absolum Dohorty, paying to said Lewis the amount of 2 first notes; amount, fifteen hundred sixty-six dollars & 68 cts.

HARRY LEWIS.

June the 21st, 1856.

STATE OF IL[illegible], } ss:
Woodford County, }

I, J. C. Irving, clerk of the circuit court and *ex officio* recorder within and for the county of Woodford and State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the record of a bond for deed from Harry Lewis to Absolum Dohorty as the same appear- on page 121 of Mortgage Record "C," now in my office. I further certify that I am the keeper of the said records and the seal of said circuit court.

In testimony whereof I have hereunto set my hand and
[L. S.] affixed my official seal, at Metamora, in said county, this 26th day of April, 1890.

J. C. IRVING,
Circuit Clerk.

This was all the evidence in said cause.

29 The court thereupon found the material facts to the questions involved in the case as admitted by the written stipulation above mentioned, and held as a matter of law that the defense under the statute of limitations is complete. To this decision of the court upon such question of law the plaintiffs, by their counsel, then and there excepted.

The plaintiffs, by their counsel, thereupon mov[illegible]d the court for a new trial in said cause on the ground that the court had erred in the application of the law to the facts in the case as found by the [illegible] which motion was overruled by the court; to which the [illegible] their counsel, then and there excepted.

The [illegible]reupon found the defendants not guilty, and rendered a judgment in accordance with such finding; to the rendering of which judgment the plaintiffs, by their counsel, then and there excepted.

And forasmuch as the matters above set forth do not fully appear of record, the plaintiffs tender this their bill of exceptions and pray that the same may be signed and sealed by the judge of this court, which is accordingly done this 27th day of October, A. D. 1890.

H. W. BLODGETT, *Judge.* [SEAL.]

30 And afterwards, to wit, on the 8th day of January, A. D. 1891, there was filed in the office of the clerk of said court a præcipe for a writ of error in the words and figures following, to wit:

In the United States Circuit Court for the Northern District of Illinois, Southern Division.

ROMEO LEWIS, HUGH SAUNDERS, RICHARD C. SAUNDERS, Jr., Ellen Maria Dew, Lavina Harwood, Hugh Dew, T. R. Dew, Reuben Dew, Henry Dew, George Dew, May Dew, and Jessie Dew
vs.
ABRAHAM BARNHART and JOSEPHUS A. GISH. } Ejectment.

The above-named plaintiffs, conceiving themselves aggrieved by the judgment entered in said cause at the October term thereof, do hereby pray that a writ of error issue herein from the Supreme Court of the United States, and that a transcript of the record and proceedings in said cause, duly authenticated, may be sent to the Supreme Court of the United States, and that citation issue to said defendants.

Peoria, Ill., December 26, 1890.

PUTERBAUGH & PUTERBAUGH,
THOMAS MILLIKIN, AND
PALMER W. SMITH,
Attorneys for Plaintiffs.

31 NORTHERN DISTRICT OF ILLINOIS, } ss:
Southern Division,

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, southern division, the second hereby certify that the foregoing is a full, true, and complete transcript of the record and proceedings in the cause wherein Romeo Lewis, Hugh Saunders, Richard C. Saunders, Jr., Susan North Dew, Ellen Maria Dew, Lavina Harwood, Hugh Dew, T. R. Dew, Reuben Dew, Henry Dew, George Dew, May Dew, and Jessie Dew are plaintiffs and Abraham Barnhart and Josephus A. Gish are defendants as fully as the same appears of record and remains on file in my office.

Seal of Circuit Court U. S., Northern Dist. Illinois, Southern Division, 1887.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Peoria, in said southern division of said northern district of Illinois, this 6th day of April, in the year of our Lord one thousand eight hundred and ninety-one, and of our Independence the 115 year.

WILLIAM H. BRADLEY, *Clerk,*
By ENOCH P. SLOAN,
Chief Deputy Clerk.

32 ROMEO LEWIS *et al.*
vs.
ABRAHAM BARNHART and JOSEPHUS GISH.

BLODGETT, *J.*:

This is an action of ejectment for the recovery of a tract of about 320 acres of land in Woodford county, in this State.

The facts material to the questions involved in the case are all admitted by a written stipulation on file, and are briefly these:

In 1838 Romeo Lewis, then of Oxford, Butler county, Ohio, entered at the United States land office in Springfield, in this State, the lands in question, together with other lands, making altogether about 1,600 acres; that said Romeo Lewis died testate at his residence, in Oxford, Ohio, on the 24th day of June, 1843; that he left no issue surviving him, but left a widow, Jane N. Lewis; that on the 8th day of January, 1842, said Romeo Lewis executed his last will and testament, which was duly probated in the proper court in Butler county, Ohio, on the 13th day of July, 1843, and under which his widow, Jane N. Lewis, was duly appointed executrix, and she qualified and entered upon her duties as such executrix and finally settled said estate in April, 1871; that by his said will Romeo Lewis, after making certain specific bequests to relatives and making provision for the support of his then aged mother, made his wife residuary legatee, the paragraph being in the following
33 words: "I further give and devise to my dearly beloved wife, Jane N. Lewis, and to the heirs of her body my houses and lands in the town of Oxford, Butler county, Ohio, and also the residue of my lands in the States of Indiana and Illinois, and all the rest, residue, and remainder of my personal estate, goods, and chattels of any kind and description whatsoever, to be equally divided between them, share and share alike."

It is further admitted that on the 2nd day of September, 1843, Mrs. Lewis, in the court where said will was probated, elected to take under the will, which election was duly entered of record; that she had no living children at the date of the will, but that one was born to her after the date of the will, and that such child died before the death of her husband; that no child was ever after born to her, and that she died at the age of eighty years, without issue, in July, 1888, at Oxford, which had been her home from the death of her husband.

It is further admitted that the plaintiffs in this case are heirs-at-law of said Romeo Lewis, being direct descendants of his brothers and sisters.

It is further admitted that the lands in question were assessed for taxes in 1845 in the name of Romeo Lewis and sold for non-payment of such taxes in October, 1846; that the certificates of purchase at said sale were assigned to Mrs. Lewis, and that on the 16th day of May, 1849, the sheriff of Woodford county executed and delivered to her a deed for said lands in pursuance of said tax sale, which deed was duly recorded in said Woodford County on the day of its date.

It is further admitted that the said Jane N. Lewis, on the
34 7th day of May, 1856, gave to one Harry Lewis a letter of

attorney, authorizing him to sell and contract to sell the lands in question, and that on the 21st of June, 1856, he made a contract in writing with one Absalom Dehority, by which he agreed to make a good and sufficient warranty deed to said Dehority of the lands involved in this suit, on payment of $5,600, according to the terms of certain promissory notes of said Dehority of even date with said contract; that said Dehority at once entered upon the possession of said lands, claiming the same under said contract, and began improving the same, and within the next two years had fenced all of said land, built two houses thereon, and had a large part of it under cultivation, and continued to so reside upon it until his death, in 1876; that on the 31st day of August, 1866, said Jane N. Lewis made to said Dehority a warranty deed of said lands, in order to carry out the contract of sale made by Harry Lewis, and that the defendant Josephus Gish now holds said lands — mesne conveyances, making a complete chain of title, duly recorded, from the heirs of said Dehority, defendant Barnhart being the tenant of said Gish, and that the defendant Josephus Gish and those under whom he claims by mesne conveyances from said Jane N. Lewis have been in full and uninterrupted possession of said lands from the time said Dehority took possession of the same, in 1856, and have paid all taxes levied and assessed thereon since that time.

It is further admitted that neither the defendants nor any of the persons from which they claim title, except said Jane N.
35 Lewis, had any knowledge whatever of the existence of said will or of the probate thereof at the time of the contract for the purchase of said lands; but it is also admitted that what purports to be a copy of said will was recorded in the recorder's office of Woodford county on the 15th of August, 1866.

Upon these admitted facts there can be no doubt that Mrs. Jane N. Lewis, under her husband's will, would have taken at common law only an estate in fee tail, which is defined to be "an estate which is confined in its descent to the posterity of some individual so as to cease upon failure of such posterity." (Burton on Real Property, p. 4.) So the same author says at page 210: "Upon a devise to a person and his issue or children the construction varies according to the circumstances. If the party have issue or children at the time when the devise is made they will take estates, it seems, for their lives jointly with their parent, but if he had no issue at that time he takes an estate tail." But by the operation of the 6th section of chapter 30 of the Revised Statutes of Illinois, title "Conveyances," which was in force at the time the will in question was made and took effect, Mrs. Lewis took only an estate for her natural life, and at the death of Mrs. Lewis, in default of the heirs of her body, the heirs-at-law of the testator, Romeo Lewis, took the estate in fee.

The question then arises, Do the admitted facts in the case furnish a defense to the claim now asserted by the heirs of Romeo Lewis, the plaintiffs? it being conceded that Mrs. Jane N. Lewis
36 obtained a tax deed from the sheriff of Woodford county on the 16th day of May, 1849, which was duly recorded in

Woodford county on that day; that Dehority, under whom defendants claim, entered in 1856 into the actual possession of the lands under a contract of purchase from Harry Lewis, agent and attorney of Jane N. Lewis, for a valuable consideration, and that said purchaser received on the 31st day of August, 1866, a warranty deed from Jane N. Lewis in order to carry out the contract of sale so made by said Harry Lewis, and that from the time he took possession under said contract, in 1856, the said purchaser and those claiming under him by warranty deeds in fee simple, duly recorded, have continued in actual possession of said premises up to the commencement of this suit, and have paid all taxes assessed against the same. The statute of Ill. (sec. 7, chap. 83, Rev. Stats.) provides that "every person in the actual possession of lands or tenements under claim and color of title made in good faith and who shall for seven successive years continue in such possession, and shall also during that time pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements to the extent and according to the purport of his or her paper title."

It is contended on behalf of the plaintiffs that Mrs. Lewis, as tenant for life, was bound to pay the taxes and could not defeat the title of the entail tenants or reversioners by allowing a tax title to accrue which should in any way change her title or her relation to the rights of those who were to take the estate after her, and that as the heirs-at-law of the testator had no right of entry until the
37 death of Jane N. Lewis, in 1888, they are not effected by this tax title which she allowed to accrue in fraud of their rights nor by her deed in fee to Dehority.

While it is contended on behalf of the defendants that as Mrs. Lewis had a color of title of record at the time the person under whom they claim purchased the lands for a valuable consideration from Mrs. Lewis, and that such purchaser having taken actual and visible possession in pursuance of such purchase, which possession has been continued with payment of taxes under deeds purporting to convey the fee-simple title to successive grantees down to the defendant Gish, he has acquired a title in fee under the laws of this State, which cannot be disturbed by the plaintiffs.

It is urged in behalf of plaintiffs that a certain book, which it is admitted was kept in the office of the county clerk of Woodford county, showing the names of the purchasers from the United States of all lands so purchased in the county, was notice with those who dealt with Mrs. Lewis or her agent that Romeo Lewis was the purchaser of the lands in question, and thus put them on inquiry as to the nature of Mrs. Lewis' title, but the supreme court of this State has held that this book is not notice to any person.

Betser *vs.* Rankin, 7 Ill., 289.
Bourland *vs.* The Co. of Peoria, 16 Ill., 538.
Anthony *vs.* Wheeler, 130 Ill., 128.

It is also urged that as a copy of the will was recorded in the

For these reasons I am of opinion that the defense, under the statute of limitations, is complete, and do not deem it necessary to pass upon the defense made upon other grounds.

An order will be entered finding defendants not guilty.

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Illinois, southern division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Romeo Lewis, Hugh Saunders, Richard C. Saunders, Jr., Ellen Maria Dew, Lavina Harwood, Hugh Dew, T. R. Dew, Reuben Dew, Henry Dew, George Dew, May Dew, and Jessie Dew, plaintiffs, and Abraham Barnhart and Josephus A. Gish, defendants, a manifest error hath happened, to the great damage of the said Romeo Lewis, Hugh Saunders, Richard C. Saunders, Jr., Ellen Maria Dew, Lavina Harwood, Hugh Dew, T. R. Dew, Reuben Dew, Henry Dew, George Dew, May Dew, and Jessie Dew, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of Circuit Court U. S., Northern Dist. Illinois, Southern Division, 1887.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 8th day of January, in the year of our Lord one thousand eight hundred and ninety-one.

WM. H. BRADLEY,

Clerk of the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

43 [Endorsed:] Romeo Lewis *et al. vs.* Abraham Barnhart *et al.* Writ of error. Filed Jan. 8, 1891. W. H. Bradley clk., by E. P. Sloan, ch. dep. clk.

44 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Abraham Barnhart and Josephus A. Gish, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, southern division, wherein Romeo Lewis, Hugh Saunders, Richard C. Saunders, Jr., Ellen Maria Dew, Lavina Harwood, Hugh Dew, T. R. Dew, Reuben Dew, Henry Dew, George Dew, May Dew, and Jessie Dew are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry W. Blodgett, acting judge of the circuit court of the United States for the southern division, this 12th day of January, in the year of our Lord one thousand eight hundred and ninety-one.

H. W. BLODGETT,
Dist. Judge Holding Cir. C't.

45 [Endorsed:] Romeo Lewis *et al. vs.* Abraham Barnhart *et al.* Citation. I accept service of the within citation for the defendants in error this March 12, 1891. R. E. Williams, attorney for defendants in error. Filed March 13, 1891. W. H. Bradley, cl'k, by E. P. Sloan, ch. dep.

46 In the Supreme Court of the United States.

ROMEO LEWIS *et al.*, Plaintiffs in Error,
vs.
ABRAHAM BARNHART *et al.*, Defendants in Error.
} Assignment of Errors.

And now come the said Romeo Lewis *et al.*, the plaintiffs in error, by Sabin D. Puterbaugh, their attorneys, and say that in the record and proceedings and in rendering judgment aforesaid there is manifest error, in this, to wit:

I. The court below erred in its conclusions of law upon the facts in the case as found by the court.

II. The court below erred in holding as a matter of law that the defense under the statute of limitations is complete.

III. The court below erred, under the facts in the case as found by the court, that the defendants are not guilty and in rendering judgment accordingly for the defendants.

Wherefore the plaintiffs in error pray that the judgment of the court below may be in all things reversed, etc.

SABIN D. PUTERBAUGH,
Attorney for Plaintiffs in Error.